



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 953

[Doc. No. AMS-SC-18-0037; SC18-953-1 FR]

**Irish Potatoes Grown in Southeastern States; Termination
of Marketing Order 953**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination of order.

SUMMARY: This final rule terminates the Federal marketing order regulating the handling of Irish potatoes grown in Southeastern states (Order). The Order has been suspended, at the industry's recommendation, since 2011.

Because the industry has not petitioned to have the Order reactivated in accordance with the terms of the suspension, the Agricultural Marketing Service (AMS) is terminating the Order.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Marketing Specialist, or Patty Bennett, Director, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202)720-

2491, Fax: (202) 720-8938, or Email:

Geronimo.Quinones@usda.gov or Patty.Bennett@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action is governed by section 608c(16) (A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," and Marketing Agreement 104 and Marketing Order 953 (7 CFR part 953), referred to as the "Order," effective under the Act.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this final rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order

13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' " (February 2, 2017).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court.

Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule terminates the Order that authorizes regulation of the handling of Irish potatoes grown in designated counties of Virginia and North Carolina. The Order has been suspended for approximately seven years, at the industry's recommendation, and the industry has not expressed interest in reactivating the Order.

Section 953.66 provides, in pertinent part, that USDA terminate or suspend any or all provisions of the Order when a finding is made that the Order or any provision thereof does not tend to effectuate the declared policy of the Act. In addition, section 608c(16) (A) of the Act provides that USDA terminate or suspend the operation of any order or any provision thereof whenever they obstruct or do not tend to effectuate the declared policy of the Act. USDA is required to notify Congress not later than 60 days before the date an order would be terminated.

The Order has been in effect since 1948 and provides for the establishment of grade, size, quality, maturity, and inspection requirements for Irish potatoes grown in Southeastern states. The Order also authorizes reporting and recordkeeping functions required for the operation of the Order. The Order, when in effect, is locally

administered by the Southeastern Potato Committee (Committee) and is funded by assessments imposed on handlers.

Based on the Committee's unanimous recommendation in 2011, USDA suspended the Order for a three-year period ending March 1, 2014. The Committee recommended the suspension to eliminate the expense of administering the Order while determining the effects of not having the Order in place. When the Committee made the recommendation to suspend the Order, it wanted the industry to have the option of reactivating the Order, if deemed appropriate.

The final rule adopting an interim rule that implemented that action was published in the *Federal Register* on October 21, 2011 (76 FR 65360). Upon suspension of the Order in 2011, the Committee ceased to function.

In anticipation of the expiration of the suspension on March 1, 2014, USDA sent a letter to members of the industry, most of whom were former Committee members, in late 2013. The letter stated that suspension of the Order would soon be ending and that members of the industry would need to recommend an action to USDA. On December 18, 2013, representatives of the Virginia and

North Carolina Irish potato industry met and requested that the suspension of all provisions of the Order be continued through March 1, 2017. The extension of the suspension would allow the industry further opportunity to study changes and evaluate new developments in the industry that could affect the need for the Order. The final rule adopting the interim rule that implemented that action was published in the *Federal Register* on August 19, 2015 (80 FR 50191).

Under the terms of the suspension, if the industry did not petition USDA to have the Order reactivated by March 1, 2017, AMS would propose termination of the Order. To date, the industry has not filed a petition to have the Order reactivated.

Final Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued

pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately ten handlers of Irish potatoes grown in Southeastern states who are subject to regulation under the Order and approximately 20 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000 (13 CFR 121.201).

Using prices reported by AMS' Market News Service, the average free on board (f.o.b.) price for Southeastern potatoes for the 2017 marketing season was about \$50 per hundredweight. Based on information from the National Agricultural Statistics Service (NASS), estimated total production in Virginia and North Carolina for the 2017 season was 4,666,000 hundredweight of potatoes. Multiplying the f.o.b. price by the estimated production results in an estimated handler value of \$233,300,000. Dividing this figure by the number of handlers (ten) yields an estimated average annual handler receipt of

\$23,330,000. Using the average price and shipment information, the number of handlers, and assuming a normal distribution, the majority of handlers have average annual receipts of more than \$7,500,000.

Based on information from NASS, during the 2017 season, there were 19,600 total acres harvested in Virginia and North Carolina with a total value of production at \$59,038,000 for the season. The average producer prices for Virginia and North Carolina Irish potatoes in 2017 were \$16.30 and \$11.40 per hundredweight, respectively, for an average price of \$13.85. Dividing the 2017 total production value by the average of the two states' producer prices and using a normal distribution, the average gross annual revenue for each of the 20 producers would be about \$213,134, which is below the SBA threshold of \$750,000.

Therefore, based on the above handler and producer revenue estimates, the majority of Southeastern potato handlers may be classified as large entities, while a majority of producers may be classified as small entities.

This final rule terminates the Order for Irish potatoes grown in Southeastern states and the rules and

regulations issued thereunder. The Order authorizes regulation of the handling of Irish potatoes grown in designated counties of Virginia and North Carolina. The Order was initially suspended in 2011, at the recommendation of the Committee, to eliminate the expense of administering the Order while the industry determined the effects of not having regulations in place. At the request of the industry in 2013, the suspension was extended through March 1, 2017, to provide the industry with more time to consider changes and evaluate new developments that could affect the future need for the Order. The final rule that extended the suspension through March 1, 2017, stated that AMS would proceed with a notice to propose termination absent an industry recommendation to reactivate the Order. The results of the suspension and the industry's failure to petition USDA to have the Order reactivated by the end of the suspension period support termination of the Order.

Section 953.66 provides that USDA terminate or suspend any or all provisions of the Order when a finding is made that the Order does not tend to effectuate the declared policy of the Act. Furthermore, section 608c(16) (A) of the Act provides that USDA terminate or

suspend the operation of any order whenever the order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act. An additional provision requires that Congress be notified not later than 60 days before the date an order would be terminated.

Termination of the Order will reduce costs to both handlers and producers (while marketing order requirements are applied to handlers, the costs of such requirements are often passed on to producers). Furthermore, following a period of over seven years of regulatory suspension, AMS has determined that termination of the Order will not adversely impact the Virginia and North Carolina Irish potato industry.

As an alternative to this action, AMS considered not terminating the Order. In that case, the industry could have recommended further refinements to the Order and the handling regulations to better meet current marketing needs. However, the industry did not petition to have the Order reactivated by the end of the suspension period. Therefore, this alternative was rejected, and AMS is terminating the Order.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being terminated were previously approved by OMB and assigned OMB No. 0581-0178, Fruit, Vegetable and Specialty Crops. Termination of the reporting requirements under the Order will reduce the reporting and recordkeeping burden on Irish potato handlers in Southeastern states and should further reduce industry expenses.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A proposed rule inviting comments regarding the termination of the Order was published in the *Federal Register* on July 25, 2018 (83 FR 35151). USDA distributed the rule to Virginia and North Carolina potato associations and other Southeastern potato industry members. In addition, the rule was made available on the internet by USDA and the Office of the Federal Register. The rule provided a 60-day comment period, which ended on September 24, 2018. One comment was received in support of the termination.

Based on the foregoing, and pursuant to § 608c(16) (A) of the Act and § 953.66 of the Order, it is hereby found that Federal Marketing Order 953 regulating the handling of Irish potatoes grown in Southeastern states does not tend to effectuate the declared policy of the Act and is therefore terminated.

Section 608c(16) (A) of the Act requires USDA to notify Congress at least 60 days before terminating a Federal marketing order. Congress was so notified on October 24, 2018.

List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 953 - [REMOVED]

For the reasons set forth in the preamble, under the authority of 7 U.S.C. 601-674, 7 CFR part 953 is removed.

Dated: February 12, 2019.

Bruce Summers,

Administrator,

Agricultural Marketing Service.

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